IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12178 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

BHAILALBHAI K. PATEL

Appearance:

1. Special Civil Application No. 12178 of 2002

MR HARDIK C RAWAL for Petitioner No. 1

RULE SERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 17/12/2003

ORAL JUDGEMENT

Heard learned advocate Mr. Hardik C Rawal for petitioner-Corporation. Rule has been served by this Court on 12.3.2003 making it returnable on 23.4.2003 and

ad interim relief is granted against the implementation of the award in question. The notice of rule has been served to the respondent but no appearance is filed by respondent in the present proceeding. Respondent Bhailalbhai K. Patel is also not remained personally present before this Court. His name has been called out by the Court Sheristedar. The conduct of the respondent from very beginning i.e. from the stage of issuing notice is that he remained absent and no appearance is filed by any advocate on behalf of respondent. This Court has initially issued notice. The respondent remained absent. Thereafter matter has been adjourned for certain occasions and thereafter rule has been issued and notice of rule is also served but the respondent remained absent. Therefore, considering these facts and conduct of the respondent, present petition has been taken up for final hearing in absence of the respondent.

2. The petitioner-Corporation has challenged the award passed by the Industrial Tribunal, Ahmedabad in Reference (IT) No. 242 of 2000 dated 24.4.2001 wherein the Tribunal has modified the punishment and directed the Petitioner-Corporation to pay the difference of salary to the respondent workman.

3. Learned advocate Mr. Hardik Rawal appearing on behalf of the petitioner-Corporation has submitted that allegations against the respondent while working as Conductor is that he reissued the tickets and misappropriated Rs.30.00. This fact was proved in departmental inquiry and, on that basis the competent authority has imposed punishment of stoppage of four increments with cumulative effect against which the dispute is raised by the respondent workman before the Industrial Tribunal and the Tribunal has modified the punishment from four increments to two increments without permanent effect. Learned advocate Mr. Hardik Rawal has submitted that for modification of the punishment, Tribunal has not given any reason. The Tribunal has simply observed that looking to the misconduct of the respondent workman, the punishment imposed by the Petitioner-Corporation is little harsh. But on what ground it is harsh and what are the circumstances, for that no discussion in the award and no reason has been given and, therefore, according to his submission the award in question is unreasoned and it amounts to non-application of mind and that is the basic error committed by the Tribunal which require interference by this Court while exercising power under Article 227 of the Constitution of India.

4. I have considered the submissions made by learned advocate Mr. Hardik Rawal and perused the award in question. The allegations levelled against the respondent workman is that he reissued ten tickets and misappropriated Rs.30.00 with dishonest intention. This misconduct is found to be proved in departmental inquiry and ultimately the competent authority has imposed punishment. The explanation given by the respondent workman is that at the relevant time it was night time and there was no full light in the Bus and 25 passengers boarded and that is how this conduct has been committed by him. He said that it was mistake in filling up waybill. According to the Tribunal, tickets of Rs.30 have been taken unused by the Conductor but he has not misappropriated the amount from cash box or treasury. The said amount has been recovered by the Petitioner-Corporation from the respondent workman. The Tribunal has come to the conclusion that if the misconduct in question as alleged by the Corporation is found to be proved which is relating to the dishonesty and negligence on the part of the respondent workman even though the punishment which has been imposed by the Petitioner-Corporation is little harsh and therefore, the Tribunal has reduced the punishment. Though the Tribunal has referred the above record vide Exhibit-9/13 wherein 15 defaults are there but the finding is that no serious misconduct in past is committed by the respondent workman. The Tribunal has not gone through the record that what kind of default has been committed in past, not discussed by the Tribunal and according to the learned advocate Mr.Hardik Rawal similar kind of ten misconducts in the past have been committed by the respondent workman. This aspect has been ignored by the Tribunal. After considering the observations made by the Tribunal, according to my opinion when the charge of dishonesty and misappropriate is found to be proved and not set aside by the Tribunal, merely come to conclusion that punishment is little harsh, is not proper on the part of the Tribunal while exercising power under Section 11(A) of the Industrial Disputes Act. Tribunal should have to justify the modification in the punishment order by cogent reason but in the said award no reason at all has been given by the Tribunal for modification of the punishment order. In view of this, the Tribunal has committed gross error in passing such award while modifying the punishment order which is without any cogent reason and the said finding is contrary to the record. Therefore, ultimately, the said finding is baseless and perverse which require interference by this Court while exercising power under Article 227 of the Constitution of India. Hence, the award in question is

required to be set aside.

5. In result, present petition is allowed. The award passed by the Industrial Tribunal, Ahmedabad in Reference (IT) No. 242 of 2000 dated 24.4.2001 is hereby quashed and set aside. Rule is made absolute. No order as to costs.

(H.K.Rathod,J)

Jayanti*